

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 96-0075 ST
Sales and Use Tax
For The Tax Periods: 1992, 1993, and 1994

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax: Non-returnable packaging materials

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2, IC 6-2.5-5-3, 45 IAC 2.2-5-8

Taxpayer protests the assessment of sales/use tax on its purchase of stretch film and tape filament used in packaging.

II. Sales/Use Tax: Engineering Drawings

Authority: IC 6-2.5-3-2, 45 IAC 2.2-4-2

Taxpayer protests the assessment of sales/use tax on its purchase of engineering drawings.

III. Sales/Use Tax: Latex Gloves

Authority: IC 6-2.5-3-2, IC 6-2.5-5-3(b)

Taxpayer protests the assessment of sales/use tax on its purchase of latex gloves used by workers to handle its products during production.

IV. Sales/Use Tax: Monthly Compactor Rental

Authority: IC 6-2.5-2-1, IC 6-2.5-4-1, IC 6-2.5-3-2

Taxpayer protests the assessment of sales/use tax on its monthly rental of a trash compactor.

STATEMENT OF FACTS

Taxpayer is a manufacturer of aluminum clad exterior wall surfaces.

Additional facts will be provided as needed.

I. Sales/Use Tax: Non-returnable packaging materials

DISCUSSION

Pursuant to IC 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana. IC 6-2.5-4-1 provides that a retail transaction involves the transfer of tangible personal property. Pursuant to IC 6-2.5-3-2, “an excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.”

IC 6-2.5-5-9(d) provides an exemption from sales/use tax for sales of wrapping material and empty containers if the person acquiring the material or containers acquires them for use as non-returnable packages for selling the contents that he adds. Pursuant to 45 IAC 2.2-5-16(c)(1), non-returnable containers and wrapping materials including steel strap are exempt from gross retail tax. Taxpayer protests the assessment of use tax on its purchase of tape filament and stretch film. Tape filament and stretch film serve the same purpose as steel strap as wrapping materials. Thus, taxpayer’s purchase of these items is not subject to sales/use tax.

FINDING

Taxpayer’s protest is sustained.

II. Sales/Use Tax: Engineering Drawings

DISCUSSION

Taxpayer protests the assessment of use tax on its purchase of drawings that were obtained in transactions for engineering services. Taxpayer argues that these are not subject to tax because what is purchased is a service; the paper is an immaterial portion of the price. The engineering service invoices contain a charge for engineering services and a separate charge for drawings.

45 IAC 2.2-4-2 provides that professional services, personal services, and services in respect to property not owned by the person rendering such services are not “transactions of a retail merchant constituting selling at retail”, and are not subject to gross retail tax. Where, in conjunction with rendering professional services, personal services, or other services, the serviceman also transfers tangible personal property for a consideration, this will constitute a transaction of a retail merchant constituting selling at retail unless:

- (1) The serviceman is in an occupation which primarily furnishes and sells services, as distinguished from tangible personal property;
- (2) The tangible personal property purchased is used or consumed as a necessary incident to the service;
- (3) The price charged for tangible personal property is inconsequential (not to exceed 10%) compared with the service charge; and
- (4) The serviceman pays gross retail tax or use tax upon the tangible personal property at the time of acquisition.

Taxpayer must show by a preponderance of the evidence that the charges for the drawings it receives are inconsequential (less than 10%) compared with the service charge. Taxpayer has not produced any information to indicate that the charges for the drawings are inconsequential compared with the service charge.

FINDING

Taxpayer's protest is denied.

III. Sales/Use Tax: Latex Gloves

DISCUSSION

Pursuant to IC 6-2.5-5-3(b), transactions involving manufacturing machinery, tools, and equipment are exempt from the state gross retail tax (or use tax) if the person acquiring that property acquires it for direct use in the direct production, manufacture, fabrication, assembly, extraction, mining, processing, refining, or finishing of other tangible personal property.

Taxpayer protests its assessment of use tax on purchases of latex gloves used for safety purposes during clean-up work. Taxpayer argues that the gloves are directly used in clean-up work. However, the gloves are not used directly in the direct production of other tangible personal property; rather, the gloves are used for clean-up work after production has ended and are therefore not exempt from tax.

FINDING

Taxpayer's protest is denied

IV. Sales/Use Tax: Monthly Compactor Rental

DISCUSSION

IC 6-2.5-4-10(a) states that a person is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person. The Department assessed use tax on

taxpayer's monthly payments for the use of a trash compactor. Taxpayer contends that pursuant to a "service agreement" with its contractor, its monthly payments for waste management per the use of a trash compactor and hauling service are not taxable because it does not rent the trash compactor; taxpayer argues that it purchased a service.

Information Bulletin #42 provides that tangible personal property may be rented or leased in conjunction with the services of an operator. Under such circumstances, the rental of the property is subject to sales tax if the lessee exercises control over the property. To exercise control over the property, the lessee must have exclusive use of the property and maintain the authority to direct the manner of the use of the property. If the lessee meets this "control" test, the property rental is subject to tax.

Taxpayer has exclusive possession of the trash compactor. Taxpayer has not produced any evidence to show that it does not have exclusive use and control over the property. Thus, pursuant to the invoice that indicates a leasing agreement for the compactor, its rent payments for the compactor are subject to use tax.

FINDING

Taxpayer's protest is denied.